

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

JAMES AVERY CRAFTSMAN, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	No. 5:16-cv-463-OLG
SAM MOON TRADING ENTERPRISES, LTD.	)	
dba SAM MOON TRADING CO.; MOON	)	JURY TRIAL DEMANDED
BROTHERS MANAGEMENT, INC. dba SAM	)	
MOON GROUP; JC & ME COLLECTION,	)	
INC.; and MODERN SILVER JEWELRY, INC.;	)	
	)	
Defendants.	)	

**DEFENDANTS' ANSWER TO AMENDED COMPLAINT**

Defendants Sam Moon Trading Enterprises, Ltd. and Moon Brothers Management, Inc. (“Defendants”) hereby file their Answer and Jury Demand to Plaintiff James Avery Craftsman, LLC’s (“Plaintiff”) First Amended Complaint (“Complaint”) and respond as set forth below. Defendants deny anything in the Complaint that is not expressly admitted below.

**PARTIES**

1. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1.
2. Admitted.
3. Admitted.
4. Defendants deny that Sam Moon Trading Enterprises, Ltd. and Moon Brothers Management, Inc. are equivalent and should be referred to as a single entity. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 4.

5. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5.

6. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6.

### **JURISDICTION AND VENUE**

7. Defendants admit that the Complaint purports to state causes of action over which this Court has jurisdiction. Defendants deny the remaining allegations in Paragraph 7.

8. Defendants admit that venue over Plaintiff's alleged claims is proper in this Court, but Defendants deny that this is the most convenient venue. Defendants deny the remaining allegations in Paragraph 8.

### **Alleged Factual Background**

9. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9.

10. Defendants deny that all of James Avery's designs are original and are copyrightable subject matter. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 10.

11. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11.

12. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12.

13. Defendants admit that Sam Moon Trading Enterprises, Ltd. operates a chain of retail stores in several cities in Texas that sell, inter alia, bracelets, necklaces, earrings, handbags,

shoes, and other products. Except as expressly admitted, Defendants deny the allegations in Paragraph 13.

14. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14.

15. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15.

16. Defendants admit that some of the allegedly infringing products were purchased from JC&ME or Modern. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 16.

17. Defendants admit that Sam Moon Trading Enterprises, Ltd. has sold products that appear to be the same products identified as allegedly infringing products in Paragraph 17. Except as expressly admitted, Defendants deny the allegations in Paragraph 17.

18. Denied.

19. Denied.

20. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20.

21. Denied.

22. Denied.

23. Defendants deny the allegations in the first sentence of Paragraph 23 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 23.

24. Defendants deny the allegations in Paragraph 24 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 as to any other defendant.

25. Defendants deny the allegations in Paragraph 25 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 as to any other defendant.

26. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26.

27. Defendants deny the allegations in Paragraph 27 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 as to any other defendant.

28. Defendants deny that they compete with Plaintiff. Defendants deny the truth of the remaining allegations in Paragraph 28 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 as to any other defendant.

29. Defendants deny the allegations in Paragraph 29 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 as to any other defendant.

30. Defendants deny the allegations in Paragraph 30 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 as to any other defendant.

31. Defendants deny the allegations in Paragraph 31 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 as to any other defendant.

**Count I**  
**Alleged Copyright Infringement**

32. Defendants incorporate their responses to Paragraph 1 through 31.

33. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33.

34. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph

35. Defendants deny the allegations in Paragraph 35 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35 as to any other defendant.

36. Defendants deny the allegations in Paragraph 36 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36 as to any other defendant.

37. Defendants deny the allegations in Paragraph 37 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37 as to any other defendant.

38. Defendants deny the allegations in Paragraph 38 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 as to any other defendant.

**Count II**  
**Alleged Violation of the National Stamping Act**

39. Defendants incorporate their responses to Paragraph 1 through 31.

40. Defendants deny the allegations in Paragraph 40 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40 as to any other defendant.

41. Defendants deny the allegations in Paragraph 41 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41 as to any other defendant.

42. Defendants deny the allegations in Paragraph 42 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42 as to any other defendant.

43. Defendants deny the allegations in Paragraph 43 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43 as to any other defendant.

44. Defendants deny the allegations in Paragraph 44 as to them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44 as to any other defendant.

45. Defendants admit that James Avery asserts a claim against Defendants pursuant to 15 U.S.C. § 298(b) but deny that they have committed any violation.

#### **Response to Jury Demand and Prayer**

While no response to Plaintiff's Jury Demand and Prayer is required, Defendants deny that Plaintiff is entitled to any of the requested relief.

#### **AFFIRMATIVE DEFENSES**

Without admitting or acknowledging that Defendants bear the burden of proof as to any particular defense, Defendants plead the following affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE – INVALIDITY**

1. The registrations for the Registered Designs are invalid because the asserted designs are not original to James Avery and/or lack copyrightable subject matter.

**SECOND AFFIRMATIVE DEFENSE – NONINFRINGEMENT**

2. Defendants have not infringed any valid, enforceable copyright asserted by James Avery.

**THIRD AFFIRMATIVE DEFENSE – FAILURE TO STATE A CLAIM**

3. Plaintiff's Complaint fails to state a claim on which relief can be granted.

**FOURTH AFFIRMATIVE DEFENSE – NO IMMEDIATE AND IRREPARABLE HARM FOR ANY INJUNCTIVE RELIEF**

4. James Avery's request for injunctive relief is barred because no immediate and irreparable harm exists.

**FIFTH AFFIRMATIVE DEFENSE – NO HARM CAUSED BY DEFENDANTS**

5. Any injury allegedly suffered by James Avery, which injury Defendants expressly deny, was proximately and directly caused by the actions of others of which Defendants had no knowledge and over which Defendants had no control.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Defendants demand a trial by jury of this action.

**DEFENDANTS' PRAYER**

WHEREFORE, Defendants request entry of judgment in their favor and against James Avery as follows:

- a. Dismissal of the Original Complaint with prejudice;
- b. That James Avery take nothing by reason of this lawsuit;

- c. That this Court adjudge that Defendants have not infringed any James Avery copyright;
- d. That this Court adjudge that all asserted James Avery copyrights are invalid;
- e. That this Court award Defendants their costs and expenses, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505; and
- f. Such other and additional relief as the Court may deem proper.

Dated: October 17, 2016

Respectfully submitted,

/s/ Matthew Nielsen

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**ATTORNEYS FOR DEFENDANTS SAM  
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MOON BROTHERS MANAGEMENT, INC.**



**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing document was served upon counsel of record pursuant to the Federal Rules of Procedure on October 17, 2016.

/s/ Matthew Nielsen